

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ELLIOTT BOTT,)	
)	
Petitioner,)	
)	
v.)	No. 4:12CV697 FRB
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

MEMORANDUM

This matter is before the Court on review of the petition of Elliott Bott for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court will summarily dismiss the petition for lack of jurisdiction.

On December 4, 1997, petitioner pled guilty to arson second degree in the Circuit Court of Phelps County, Missouri. See Bott v. State, 353 S.W.3d 404, 405 (Mo. Ct. App. 2011) (affirming dismissal of postconviction relief motion). The court suspended the imposition of sentence and placed petitioner on probation. Id. at 406. On October 4, 2001, the court revoked plaintiff's probation "for threatening officers of the court and consuming alcoholic beverages." Id. at 407. The court sentenced petitioner to five years' imprisonment. Id.

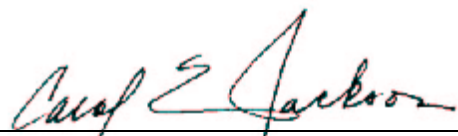
Petitioner is currently confined in the Laclede County Jail in Lebanon, Missouri based on a charge of driving while intoxicated. State v. Bott, 11LA-CR00871 (26th Jud.

Cir.). Petitioner does not allege that he is on probation or parole as a result of the 1997 arson conviction.

District courts have jurisdiction to entertain petitions for habeas relief only from persons who are “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The custody requirement is fulfilled when a petitioner is in custody “under the conviction or sentence under attack at the time his petition is filed.” Maleng v. Cook, 490 U.S. 488, 490-91 (1989). Where the sentence under challenge has fully expired, the custody requirement is not met. Id. The custody requirement is jurisdictional. Id.

Because petitioner is no longer in custody on the 1997 conviction, the Court will dismiss the petition for lack of jurisdiction. A separate Order of Dismissal will accompany this Memorandum.

Dated this 10th day of July, 2012.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE